

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Cindy Gilliam,)	
)	
Plaintiff,)	Civil Action No. 8:20-130-RMG
)	
vs.)	
)	
Andrew Saul, Commissioner)	
of Social Security Adminstation,)	ORDER
)	
Defendant.)	
)	
)	
)	

This matter comes before the Court for judicial review of the final decision of the Commissioner of Social Security denying Plaintiff’s application for Disability Insurance Benefits (“DIB”). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to the United States Magistrate Judge for pretrial handling. The Magistrate Judge issued a Report and Recommendation (“R & R”) on December 21, 2020, recommending that the decision of the Commissioner be reversed and remanded to the agency because the Administrative Law Judge (“ALJ”) discounted the opinions of Plaintiff’s treating physicians and credited the opinions of nontreating and nonexamining chart reviewers because of the lack of objective evidence related to the claimant’s fibromyalgia. (Dkt. No. 17 at 19-24). *See, Arakas v. Commissioner*, ___ F.3d ___, 2020 WL 7331494 at *2 (4th Cir. 2020). The Commissioner has advised the Court that he does not intend to file objections to the R & R. (Dkt. No. 18).

The Court **ADOPTS** the Report and Recommendation as the order of this Court, **REVERSES** the decision of the Commissioner pursuant to Sentence Four of 42 U.S.C. § 405(g), and **REMANDS** the matter to the Commissioner for further proceedings consistent with this

order. Additionally, on remand, if the ALJ is unhappy with the format used by the treating physicians for offering their opinions, the ALJ is not permitted simply to discount the opinion on that basis but must follow up with the treating physician to develop a “full and fair record” and to correct any gaps or deficiencies in the record.¹ *See, Thompson v. Sullivan*, 933 F.2d 581, 585-586 (7th Cir. 1991); *Fogle v. Berryhill*, C.A. No. 9:17-1503-RMG, 2018 WL 3727359 (D.S.C. 2018).

AND IT IS SO ORDERED.

S/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

Charleston, South Carolina
December 27, 2020

¹ The ALJ, using essentially identical language, discounted the opinions of Plaintiff’s treating physicians, Dr. Loudermilk and Dr. Norris, because the physicians “completed an opinion form developed by the claimant’s attorney” and the form was unsigned. (Dkt. No. 13-1 at 22-24). The Court has reviewed the forms and handwritten responses completed by the physicians and find nothing improper or suggestive by these forms. (Id. at 487-488, 501-502). These forms are commonly presented to treating physicians by claimant attorneys out of respect for the time demands of busy physicians and there is nothing inherently improper about obtaining the opinions of treating physicians in this manner. Moreover, it should be noted that the chart reviewers commonly submit their opinions on prepared forms submitted by the Social Security Administration. The Court has yet to see an ALJ complain about a chart reviewer offering opinions in this manner. The bottom line is that eliciting opinions from doctors on printed forms helps focus the physicians on areas of importance to the Social Security disability process. If an ALJ is unhappy with the format or lack of a signature on a form submitted by a physician, the proper response is to follow up with the physician to fill that gap in the record. Discounting an opinion on that basis is contrary to the Commissioner’s commitment to consider all medical opinions presented.